



Order F21-57

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Ian C. Davis
Adjudicator

November 9, 2021

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Summary: The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Public Safety and Solicitor General (Ministry) for any and all records related to a complaint filed against a named business regarding the “BC Security License for CCTV Installation”. The Ministry provided the responsive records to the applicant, but withheld some information in the records under ss. 15(1) (disclosure harmful to law enforcement) and 22(1) (unreasonable invasion of a third party’s personal privacy) of FIPPA. The adjudicator decided that the Ministry is authorized to withhold most of the disputed information under s. 15(1)(d), but must disclose the other information because neither s. 15(1)(d) nor s. 22(1) apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(d), 22(4)(e), 22(3)(b), 22(2)(f) and 22(1).

INTRODUCTION

[1] The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Public Safety and Solicitor General (Ministry). The applicant requested any and all records related to a complaint filed against a named business regarding the “BC Security License for CCTV Installation”.¹

[2] The Ministry provided the responsive records to the applicant, but withheld some information in the records under ss. 15(1) (disclosure harmful to law enforcement) and 22(1) (unreasonable invasion of a third party’s personal privacy) of FIPPA.²

¹ Access request email dated May 30, 2019. The date range for the request was from May 1, 2018 to May 30, 2019.

² Investigator’s Fact Report at paras. 2-4.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve the matter and it proceeded to inquiry.

PRELIMINARY MATTER

[4] The applicant made brief submissions via email.³ He says the FIPPA process has been unfair. The applicant alleges that the government freedom of information (FOI) specialist who refused him access to the requested information was biased. Specifically, the applicant says the FOI specialist has ties to an organization that he claims made the complaint against the business.⁴ The applicant alleges that the OIPC is covering up for the FOI specialist.

[5] The Ministry submits that the applicant's allegations are unfounded.⁵

[6] The applicant is clearly concerned about bias. However, this concern appears to be based on a misunderstanding of the OIPC's relationship to government. I can assure the applicant that the OIPC is independent from government, including the FOI specialist. My duty in this inquiry, which I carry out in the decision below, is to provide an independent and impartial review of the Ministry's decision based on the law and evidence, and nothing else.⁶ Given the OIPC's independent oversight role, I am not persuaded that the applicant's bias concern is well-founded in relation to this inquiry.

[7] The applicant did not make any other submissions about the application of ss. 15(1) and 22(1) of FIPPA to the information in dispute. As a result, in my discussion below, I only refer to the Ministry's submissions.

ISSUES AND BURDEN OF PROOF

[8] The issues I will decide in this inquiry are:

1. Is the Ministry authorized under s. 15(1) to refuse access to the disputed information?
2. Is the Ministry required under s. 22(1) to refuse access to the disputed information?

³ Emails from the applicant to the OIPC and the Ministry dated June 25, 2021 (12:02 PM and 12:41 PM) and June 28, 2021 (12:14 PM and 1:45 PM).

⁴ Email from the applicant to the OIPC and the Ministry dated June 25, 2021 (12:41 PM); email from the applicant to the OIPC dated July 18, 2019.

⁵ Ministry's reply submissions at p. 1.

⁶ See, for example, *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at paras. 57-61.

[9] The burden of proof is on the Ministry to establish that s. 15(1) applies.⁷ However, the applicant bears the burden under s. 22(1) to show that it would not be an unreasonable invasion of a third party's personal privacy to disclose the disputed information.⁸

BACKGROUND

[10] The Ministry is responsible for delivering public safety services in British Columbia.⁹ Within the Ministry, the Security Programs Division of the Policing and Security Branch provides oversight of the security industry.

[11] The Security Programs Division administers the *Security Services Act*¹⁰ (SSA) under the direction of the Registrar of Security Services (Registrar). The Registrar is responsible for the regulation of licensed security professionals under the SSA. The Registrar is also responsible for dealing with complaints made relating to the SSA.

[12] Sometime prior to March 2019, a complainant made a complaint to the Registrar about the business named in the applicant's access request. The complainant alleged that the business was operating a security business without a security business licence. Section 11(2) of the SSA states that a person must not carry on a security business unless the person holds a valid security business licence or is exempt by regulation from that requirement.

[13] The Ministry's evidence and the parts of the records already disclosed clearly indicate that the applicant owns or is otherwise involved in the business that is the subject of the complaint.

[14] The Security Programs Division reviewed the complaint and the Registrar decided that it warranted further investigation. On March 19, 2019, the Division assigned the file to an investigator, who investigated. On May 29, 2019, the investigator concluded the investigation. Ultimately, the investigator was satisfied with the business' compliance with the SSA and closed the file. No penalty was issued as a result of the investigation.

[15] On May 30, 2019, the applicant made the access request at issue in this inquiry.

⁷ FIPPA, s. 57(1).

⁸ FIPPA, s. 57(2). However, the Ministry has the initial burden to show that the information it is withholding under s. 22(1) is personal information: Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

⁹ The information in this background section is based on the information already disclosed in the records, the Ministry's initial submissions at para. 30, and the evidence, which in general I accept, in Affidavit #1 of CG at paras. 2-3, 5-6 and 11-16.

¹⁰ S.B.C. 2007, c. 30.

RECORDS AND INFORMATION IN DISPUTE

[16] There are 29 pages of records in the package before me, 21 of which the Ministry already disclosed to the applicant in full. The records in dispute are an investigation report and an email chain, attached as an exhibit to the report.

[17] Based on my review, I find that the information in dispute in the records is, in general terms:

- the complainant’s name and contact information;
- the names of, and contact information for, other third parties involved in the investigation;
- parts of the investigator’s summary of the investigation;
- some of the evidence gathered in the investigation and the investigator’s descriptions of that evidence; and
- parts of an email chain between the investigator and third parties involved in the investigation.¹¹

HARM TO LAW ENFORCEMENT – SECTION 15

[18] The Ministry submits that s. 15(1)(d) applies to the disputed information.¹² That subsection states:

(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information[.]

[19] The standard the Ministry must satisfy under s. 15(1)(d) is a “reasonable expectation of harm”; this is a “middle ground between that which is probable and that which is merely possible.”¹³ The Ministry is not required to prove that disclosure of the disputed information will reveal the identity of a confidential source of law enforcement information, or even that disclosure is more likely than not to reveal the identity of such a source.¹⁴ It need only prove that there is a “reasonable basis for believing” that disclosure of the disputed information

¹¹ Records at pp. 1-5 and 16-18. By “third parties”, I mean “any person, group of persons or organization other than (a) the person who made the request [i.e., the applicant] or (b) a public body”: see Schedule 1 of FIPPA.

¹² Ministry’s initial submissions at paras. 24-44.

¹³ *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 201.

¹⁴ *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para. 93.

could reveal the identity of a confidential source of law enforcement information.¹⁵

[20] The s. 15(1)(d) analysis is contextual and the evidence required depends on the nature of the issue and “inherent probabilities and improbabilities or the seriousness of the allegations or consequences”.¹⁶ The release of the information itself must give rise to a reasonable expectation of revealing the identity of a confidential source.¹⁷

[21] The express wording of s. 15(1)(d) sets out several requirements. Based on the wording of the section, I will consider below:

- whether the complainant and other third parties involved in the investigation (third parties) are “sources” of “law enforcement information”;
- whether the third parties are “confidential” sources of law enforcement information; and
- whether disclosing the disputed information could reasonably be expected to “reveal the identity” of one or more of the third parties.¹⁸

[22] I address these issues in turn below.

Are the third parties “sources” of “law enforcement information”?

[23] The Ministry submits that the confidential “sources” involved here are the third parties. Based on my review of the records, I accept that these third parties provided information to the Security Programs Division, including the investigator, so they qualify as “sources” of information.

[24] The next question is whether the third parties, as sources of information, provided “law enforcement information”. The term “law enforcement” is defined in Schedule 1 of FIPPA as:

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or

¹⁵ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 at para. 42.

¹⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

¹⁷ *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.

¹⁸ See, for example, Order 00-18, 2000 CanLII 7416 (BC IPC) at s. 3.1.

- (c) proceedings that lead or could lead to a penalty or sanction being imposed[.]

[25] The Ministry submits that the third parties are sources of law enforcement information because they provided information in the context of an investigation that could have led to a penalty or sanction being imposed on the person carrying on the business.¹⁹ The Ministry relies on s. 35(1) of the SSA, which provides:

- (1) After giving a person an opportunity to be heard, the registrar may impose an administrative penalty on the person if the person contravenes
- (a) a prescribed provision of this Act or the regulations, or
 - (b) a condition of a licence.²⁰

[26] Section 36 of the SSA states that an individual on whom an administrative penalty is imposed is liable to a penalty of not more than \$5,000. It also says that, for a business entity on which an administrative penalty is imposed, the penalty is up to \$50,000.

[27] The investigator was investigating the business' compliance with s. 11(2) of the SSA, which, as noted, requires a security business to have a valid security business licence. In my view, s. 11(2) is clearly a "prescribed provision" of the SSA and sets out a "condition of a licence". As a result, I am satisfied that if the person carrying on the business had contravened s. 11(2), the Registrar could have imposed an administrative penalty under either s. 35(1)(a) or s. 35(1)(b) in accordance with the limits set out in s. 36. Since the investigation could have led to a penalty being imposed, I am satisfied that it involved "law enforcement" as that term is defined in FIPPA.

[28] I conclude that the third parties are sources of "law enforcement information". They provided information in the context of an investigation that I accept fits within the definition of "law enforcement" under FIPPA.

Are the third parties "confidential" sources?

[29] Having found that the third parties are sources of law enforcement information, the next question is whether they are "confidential" sources.

¹⁹ Ministry's initial submissions at paras. 31-36.

²⁰ The term "licence" is defined in s. 1 of the SSA as including a "security business licence" issued under the SSA.

[30] The Ministry submits that the third parties are confidential sources.²¹ The Ministry provided sworn evidence that:

- the complaints process under the SSA is confidential;
- at no stage during an investigation is the complainant's identity disclosed to the subject of the complaint; and
- the investigator confirmed that he assures complainants confidentiality and anonymity, and also collects and keeps in confidence the information he receives in the course of an investigation.²²

[31] In my view, this evidence is sufficient to establish that the third parties are confidential sources of law enforcement information. I accept that, in accordance with standard practice and policy, the investigator treated as confidential the third parties' identities and the information they provided in the course of the investigation.

Could disclosure of the disputed information reasonably be expected to “reveal the identity” of one or more of the third parties?

[32] The final question under s. 15(1)(d) is whether disclosing the disputed information could reasonably be expected to reveal the identity of one or more of the third parties, given that they are confidential sources of law enforcement information.

[33] The Ministry submits that this part of the s. 15(1)(d) test is satisfied.²³

[34] The disputed information includes the names and contact information of the third parties. In my view, disclosing this information would directly reveal the identities of the third parties, so s. 15(1)(d) clearly applies.

[35] The balance of the disputed information discloses steps the investigator took in the investigation and some of the evidence the investigator gathered during the investigation.

[36] With respect to this information, the Ministry argues that “the circumstances surrounding the provision of information, the timing of the information and the content of the information is specific enough that the individual(s) would be identifiable if the information is disclosed.”²⁴ In short, the Ministry argues that disclosing this information could reasonably be expected to allow the applicant to accurately infer the third parties' identities.

²¹ Ministry's initial submissions at paras. 39-41.

²² Affidavit #1 of CG at paras. 17-18.

²³ Ministry's initial submissions at paras. 26 and 42-44.

²⁴ Ministry's initial submissions at para. 42.

[37] I accept that disclosing most of the information could reasonably be expected to reveal the third parties' identities. Parts of the Ministry's submissions on this point are *in camera*, so I am limited in what I can say here. The most I can say is that, based on the factual circumstances and the content of the disputed information itself, I am satisfied that disclosing this information could reasonably be expected to allow the applicant to accurately infer the third parties' identities.

[38] However, I am not persuaded that this is the case for all of the disputed information. I find that s. 15(1)(d) does not apply to some generic descriptors in the investigation report²⁵ and parts of the investigator's summary of the investigation.²⁶ The generic descriptors alone do not reveal anything about any individuals. I accept that parts of the summary reveal the subject of the investigation, but I am not persuaded that anyone could reasonably be expected to infer the third parties' identities from this information. In my view, this information simply describes aspects of the investigation that occurred regardless of the third parties' identities.

Conclusion regarding s. 15(1)(d)

[39] I conclude that disclosing most of the disputed information could reasonably be expected to reveal, directly or indirectly, the identities of confidential sources of law enforcement information. The Ministry is authorized to withhold that information under s. 15(1)(d). However, I find, for the reasons provided above, that s. 15(1)(d) does not apply to the generic descriptors and parts of the investigator's summary.

[40] The Ministry is also withholding the generic descriptors under s. 22(1), so I will consider them under that section below. It is not clear to me whether the Ministry is also withholding parts of the investigator's summary under s. 22(1).²⁷ To ensure completeness and since s. 22(1) is a mandatory exception to disclosure, I will consider that information under s. 22(1) as well.

THIRD-PARTY PERSONAL PRIVACY – SECTION 22

[41] Section 22(1) states that a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. The analytical approach to s. 22 is well established.²⁸ I apply it below.

²⁵ Records at pp. 1 and 5.

²⁶ Records at p. 3 (withheld information under "April 30, 2019" and some withheld information under "May 13, 2019").

²⁷ The records the Ministry provided indicate that it is withholding the information on p. 3 under the heading "April 30, 2019" under s. 15(1) only. However, it is withholding all of the other disputed information under both ss. 15(1) and 22(1), so I am concerned this may just be an oversight and the Ministry intended to withhold all of the disputed information under both sections.

²⁸ See, for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58.

[42] Section 22(1) only applies to personal information, so the first step is to determine whether the disputed information is personal information. FIPPA defines personal information as “recorded information about an identifiable individual other than contact information”.²⁹ Information is “about an identifiable individual” when it is “reasonably capable of identifying an individual, either alone or when combined with other available sources of information.”³⁰

[43] FIPPA defines contact information as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual”.³¹ I am satisfied that none of the disputed information is contact information.

[44] The Ministry submits that the information in dispute is personal information.³²

[45] In my view, the general descriptors are not personal information because they are general and not about an identifiable individual. As a result, the Ministry must disclose this information.

[46] However, I accept that the disputed parts of the investigator’s summary are personal information. This information describes steps the investigator took in the course of the investigation. Based on my review, I am satisfied this information is partly the investigator’s personal information and partly the applicant’s personal information.

[47] The next step is to consider whether s. 22(4) applies, which sets out various circumstances in which a disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy.

[48] The Ministry submits that s. 22(4) does not apply.³³

[49] In my view, the only relevant subsection is s. 22(4)(e). That subsection states that a disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if it is about the third party’s “functions” as an employee of a public body. Past orders establish that s. 22(4)(e) applies to “objective, factual statements about what the third party did or said in the normal

²⁹ Schedule 1 of FIPPA.

³⁰ Order F19-13, 2019 BCIPC 15 (CanLII) at para. 16 citing Order F18-11, 2018 BCIPC 14 (CanLII) at para. 32.

³¹ Schedule 1 of FIPPA.

³² Ministry’s initial submissions at paras. 48-53.

³³ Ministry’s initial submissions at para. 54.

course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions.”³⁴

[50] The definition of a “third party” in Schedule 1 of FIPPA is any person, group of persons or organization other than the person who made the access request or a public body. Accordingly, the investigator is a third party here because he is neither the Ministry, nor the applicant.

[51] I find that s. 22(4)(e) applies to the disputed parts of the investigator’s summary. This is because, in my view, the disputed information is objective, factual statements about what the investigator did in the normal course of discharging his duties in the context of an investigation implicating the applicant only and not a third party. The records clearly indicate that the investigator was working for the Security Program Division,³⁵ which is part of the Ministry, so I am satisfied that this information is about the investigator’s functions as a public body employee under s. 22(4)(e).

[52] In any event, even if s. 22(4)(e) does not apply to the disputed parts of the investigator’s summary or only applies to some of that information, I would find that disclosure of the disputed information would not be an unreasonable invasion of a third party’s personal privacy. My reasons for that are set out in paragraphs 53-60 below.

[53] The Ministry raised s. 22(3)(b).³⁶ That section states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if the personal information was “compiled and is identifiable as part of an investigation into a possible violation of law”.

[54] In my view, s. 22(3)(b) does not apply here. In Order F11-10, the adjudicator held that s. 22(3)(b) does not operate as a presumption in favour of withholding the applicant’s own personal information.³⁷ I make a similar finding here. As I found above, the specific information in question is partly the applicant’s own personal information. I recognize that the information is also about the investigator. However, the investigator is not implicated in the complaint or under investigation. Neither is any other third party. The applicant is the only one under investigation, so I do not see how disclosing this information would unreasonably invade a third party’s personal privacy.

[55] I am not persuaded that any of the other presumptions under s. 22(3) apply.

³⁴ Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 40. See also Order 02-57, 2002 CanLII 42494 (BC IPC) at para. 36; Order F10-21, 2010 BCIPC 32 (CanLII) at paras. 22-24.

³⁵ Records at pp. 1 and 16-21.

³⁶ Ministry’s initial submissions at paras. 57-66.

³⁷ Order F11-10, 2011 BCIPC 13 at para. 39.

[56] The last step of the analysis is to consider all relevant circumstances, including those listed in s. 22(2).

[57] The Ministry mentioned s. 22(2)(f),³⁸ which concerns whether the disputed information was “supplied in confidence”. In my view, s. 22(2)(f) does not apply because the information was not supplied. The information in dispute sets out some of the investigator’s investigative steps and discloses information the investigator himself gathered, but it does not reveal information that was supplied to the investigator.

[58] Finally, past orders have considered under s. 22(2) whether the information is the applicant’s own personal information.³⁹ As former Commissioner Loukidelis stated in Order 01-54, “an applicant will rarely be denied access to her or his own personal information in order to protect third-party personal privacy.”⁴⁰ Here, the disputed information is partly the applicant’s personal information, so this factor weighs in favour of disclosure, although not as strongly as if the information were solely the applicant’s personal information.

[59] I am satisfied that no other factors are relevant here.

[60] As stated above, in my view, parts of the investigator’s summary describing investigative steps fall under s. 22(4)(e) in the particular circumstances of this case and must be disclosed. In any event, even if s. 22(4)(e) does not apply, I would find, having regard to all relevant circumstances, that disclosure would not be an unreasonable invasion of a third party’s personal privacy. The only third party involved in relation to this specific information is the investigator, who is carrying out work duties as a Ministry employee. In these circumstances, I am not persuaded that it would unreasonably invade the investigator’s personal privacy to disclose the information, particularly given that the information is also the applicant’s personal information. I conclude that s. 22(1) does not apply to the disputed parts of the investigator’s summary.

[61] As I found above, s. 22(1) also does not apply to the general descriptors because they are not personal information.

CONCLUSION

[62] For the reasons given above, under s. 58(2) of FIPPA, I make the following orders:

³⁸ Ministry’s initial submissions at para. 69.

³⁹ See, for example, Order F18-30, 2018 BCIPC 33 at para. 41; Order F20-13, 2020 BCIPC 15 at para. 73.

⁴⁰ Order 01-54, 2001 CanLII 21608 (BC IPC) at para. 26.

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1. I confirm, in part, the Ministry's decision to refuse the applicant access to the disputed information under s. 15(1)(d).
 2. I require the Ministry to give the applicant access to the disputed information that I have highlighted in a copy of the records that will be provided to the Ministry with this order. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records.

Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by December 22, 2021.

November 9, 2021

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

OIPC File No.: F19-79884